

HOUSE BILL 148

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Rebecca Dow and Javier Martínez

AN ACT

RELATING TO BUSINESS; EXTENDING THE DATE APPLICATIONS FOR LOANS PURSUANT TO THE SMALL BUSINESS RECOVERY AND STIMULUS ACT MUST BE RECEIVED; EXTENDING THE REVERSION DATE OF UNENCUMBERED MONEY IN THE SMALL BUSINESS RECOVERY LOAN FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-32-3 NMSA 1978 (being Laws 2020 (1st S.S.), Chapter 6, Section 3, as amended) is amended to read:

"6-32-3. SMALL BUSINESS RECOVERY LOAN FUND--CREATED-- FUNDING SCHEDULE.--

A. The "small business recovery loan fund" is created in the authority. The fund consists of appropriations, gifts, grants, deposits, transfers and donations to the fund. Money in the fund is appropriated to the authority to administer the provisions of the Small Business Recovery and

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1 Stimulus Act. The authority shall administer the fund.
2 Balances remaining in the fund as of December 31, [~~2022~~] 2023
3 and not identified by the authority as necessary to administer
4 the Small Business Recovery and Stimulus Act over the life of
5 the loans provided pursuant to that act shall revert to the
6 severance tax permanent fund. The authority may expend no more
7 than two percent of the state investment council's commitment
8 pursuant to Section 7-27-5.15 NMSA 1978 for administering the
9 Small Business Recovery and Stimulus Act.

10 B. [~~Upon the effective date of this 2021 act~~] On
11 March 3, 2021, the authority and the state investment council
12 shall coordinate to develop a funding schedule to ensure that
13 sufficient funding, as provided for in Section 7-27-5.15 NMSA
14 1978, is made available to the authority to carry out the
15 provisions of the Small Business Recovery and Stimulus Act."

16 SECTION 2. Section 6-32-4 NMSA 1978 (being Laws 2020 (1st
17 S.S.), Chapter 6, Section 4, as amended) is amended to read:

18 "6-32-4. LOANS--TERMS.--

19 A. The authority shall receive and review
20 applications for small business recovery loans pursuant to the
21 Small Business Recovery and Stimulus Act. The authority may
22 designate one or more application periods and shall review
23 small business recovery loan applications received in each
24 application period in the order in which the completed
25 applications were received and shall provide a determination to

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1 the applicant within a reasonable time period after review.
2 The authority shall make loans to qualifying small businesses;
3 provided that funds are available and the qualifying small
4 business satisfies credit and identification criteria, as
5 determined by the authority. The authority shall adopt rules
6 to govern the application procedures and requirements for
7 disbursing loans under the Small Business Recovery and Stimulus
8 Act, including requirements consistent with the purpose of that
9 act for determining the eligibility of qualifying small
10 businesses for loans; provided that the authority may issue
11 rules to permit a business that does not have a record of
12 actual losses, but can otherwise satisfy the requirements of
13 the Small Business Recovery and Stimulus Act, to apply for a
14 small business recovery loan.

15 B. The authority shall evaluate an application
16 based on information received from the applicant as well as
17 third-party credit and identification reports.

18 C. The authority shall make small business recovery
19 loans in accordance with the following:

20 (1) the loan amount shall be in an amount not
21 to exceed three hundred percent of the qualifying small
22 business's average monthly business expenses as determined by
23 the authority; provided that the maximum loan amount shall be
24 no greater than one hundred fifty thousand dollars (\$150,000);

25 (2) the terms of the loan shall require that:

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1 (a) for a loan recipient that is not a
2 non-employer business, the recipient shall use a minimum of
3 eighty percent of the proceeds of the loan for: 1) ordinary
4 and necessary business expenses, including capital expenses,
5 other than compensation for an individual who owns equity in
6 the business; 2) making adaptations or improvements to assets,
7 including real property, that are necessary due to the
8 coronavirus disease 2019 public health emergency to protect the
9 public health; and 3) purchasing or improving any assets for
10 the purpose of developing and growing the qualifying small
11 business's e-commerce production and sales capacity;

12 (b) for a loan recipient that is a non-
13 employer business, the recipient shall use a minimum of fifty
14 percent of the proceeds of the loan for: 1) ordinary and
15 necessary business expenses, including capital expenses, other
16 than compensation for an individual who owns equity in the
17 business; 2) making adaptations or improvements to assets,
18 including real property, that are necessary due to the
19 coronavirus disease 2019 public health emergency to protect the
20 public health; and 3) purchasing or improving any assets for
21 the purpose of developing and growing the qualifying small
22 business's e-commerce production and sales capacity;

23 (c) the loan recipient provide a written
24 certification signed by an appropriate officer of the
25 qualifying small business that certifies that: 1) the officer

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1 understands that the business is receiving a loan under the
2 Small Business Recovery and Stimulus Act that must be repaid by
3 the business with interest under the terms of the loan
4 agreement; 2) all documents submitted in support of the loan
5 application and all statements and certifications made in the
6 loan application are true and accurate to the best of the
7 officer's knowledge; 3) prior to the issuance of the public
8 health order issued by the secretary of health on March 23,
9 2020, the business was current on all obligations pursuant to
10 the Income Tax Act, the Corporate Income and Franchise Tax Act,
11 the Withholding Tax Act, the Gross Receipts and Compensating
12 Tax Act and the Unemployment Compensation Law applicable to the
13 business's operations; and 4) all loan proceeds will be used
14 for purposes as provided in the Small Business Recovery and
15 Stimulus Act, including that no more than twenty percent of the
16 proceeds may be used as compensation for employees who own
17 equity in the business; and

18 (d) the loan recipient provide the
19 authority with ongoing information relevant to the reporting
20 requirements of the authority provided in Section 6-32-7 NMSA
21 1978;

22 (3) the terms of the loan shall not require
23 that the qualifying small business provide a personal guarantee
24 or collateral to secure a loan in the amount of seventy-five
25 thousand dollars (\$75,000) or less. For a loan in an amount

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1 greater than seventy-five thousand dollars (\$75,000), the
2 authority may require a personal guarantee or collateral to
3 secure the amount of the loan greater than seventy-five
4 thousand dollars (\$75,000); provided that the authority shall
5 define specific guidelines related to personal guarantees or
6 collateral; and

7 (4) the application for a loan must be
8 received no later than ~~May~~ December 31, 2022.

9 D. The authority may exercise any power provided to
10 the authority in the New Mexico Finance Authority Act to assist
11 in the administration of the Small Business Recovery and
12 Stimulus Act; provided that the power is consistent with the
13 provisions of that act."

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